HIGH COURT OF UTTARANCHAL AT NAINTIAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32(2)(b)

Description of the case.

No. W.P. 582 of 2005 (S/S)
Ashok Kumar

Vs.

State of Uttaranchal

Approved for reporting

~~Not approved for reporting~~

Date of decision 13.5.2005

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 582 of 2005 (SS)

Ashok Kumar ..... Petitioner

Versus

1. State of Uttaranchal
2. Chief Engineer, Irrigation Department
3. Superintenting Engineer, Tonse Civil Construction Circle I, Dehradun
4. Executive Engineer, YamunaNirman Khand 1st Dehradun. ..... Respondents

Sri M.C. Pant, Advocate for the petitioner.

Standing Counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 28.4.2005 (annexure -1 to the writ petition).

Briefly stated that petitioner was appointed as a daily wager employee on compassionate ground under Dying in Harness Rules in place of the brother of the petitioner, on 2.12.2004. All of the sudden on 28.4.2005, the services of the petitioner were terminated on the ground that the appointment of the petitioner was not in accordance with rules.

The counsel for the petitioner has submitted that on 28.4.2005 the appointment of the petitioner was cancelled

without giving any opportunity to the petitioner. The counsel for the petitioner has referred the case of Ravi Karan Singh vs. State of U.P. and others, 1991 (3) UPLBEC 2263, where a Division Bench of Allahabad High Court after relying upon the case of Budhi Sagar Dubey v. D.I.O.S. (1993) 1 UPLBEC 197, Gulab Yadav b. State of U.P. & others (1991) 2 UPLBEC 995 and Dhirendra Pratap Singh vs. D.I.O.S. & others (1991) 1 UPLBEC 427 it has been held that the appointment under dying in Harness rules has to be treated as a permanent appointment otherwise it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying in Harness Rule.

It is well established that appointment under Dying in Harness Rules is always made in order to help the family of an employee form distress who died in harness.

The petitioner has placed reliance on the Apex Court's judgment in the case of Smt. Shushma Goasi and others vs. Union of India and others, 1989 (4) SCC, 468, wherein Apex Court has held as under:

"*We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family.*"

The impugned order by which the services of the petitioner were terminated shows that no opportunity was given to the petitioner at all to defend her cause. A perusal of the order further shows that it does not indicate any rule which allegedly has been voilated by giving appointment to the petitioner. The order impugned, therefore, suffers gross illegality and cannot be sustained.

Accordingly the writ petition is allwed and the impugned order dated 28.4.2005 is hereby quashed. No order as to costs.

Rajesh Tandon, J.

13.5.2005
*Dhyani